THE HON'BLE SMT. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.P.NOS.17397, 17398, 17399 AND 17400 OF 2007

COMMON ORDER (Per the Hon'ble Smt. Justice T.Meena Kumari)

Heard both the counsel.

2. Since the issue involved in all these writ petitions is common, they are heard analogously and are being deposed of by this common order.

3. From the material available on record, it could be seen that the Andhra Pradesh Public Service Commission (for short 'the Commission') has issued the notification No.5/98 dated 24.6.1998 for filling up 90 posts of Group - I Services and among them, 19 posts were Deputy Superintendent of Police (for short 'D.S.P.') under Category – II. Subsequently, from the 19 posts of D.S.Ps., 9 posts were deleted. The deletion of the posts was challenged before the Andhra Pradesh Administrative Tribunal, Hyderabad in O.A.No.6643/2003 and the said O.A. was allowed and the matter was carried up to the Apex Court and order of the Tribunal was upheld and in pursuance thereto steps were taken up for filling up the nine vacancies of D.S.Ps and at this juncture, the present O.As. were filed. The respondents in all these writ petitions, who were the applicants before the Tribunal and who were selected in the Group – I Services, exercised their options and as per the preferences vis-à-vis the posts available, they were given postings. Subsequent to the judgment of the Apex Court, the Commission has issued the notification dated 13.2.2007 publishing the list of 20 candidates.

4. Prior to the present notification dated 13.2.2007 and in the initial selection, based on the options and preferences, the applicants in O.A.Nos.889 and 1310 of 2007 were selected as Lay Secretary and Treasurer Grade-II/Administrative Officer respectively and the applicant in O.A.No.1512/2007 was selected as Assistant Treasury Officer. In the notification dated 13.2.2007, these applicants were selected to different posts viz., District Employment Officer, Deputy Superintendent of Police (Jails-Men)

and Lay Secretary/Treasurer Grade – II respectively. Now the grievance of the applicants in these O.As is that pursuant to initial selection, they were appointed to the above said posts and they have put in about six years of service and also got promotions and if they are given fresh appointments as per the notification dated 13.2.2007, they may have to forego their service and also promotional and monitory benefits and hence they sought for a direction to seek for fresh options.

5. The case of the applicants in O.A.No. 544/2007 is that as the number of D.S.P. vacancies was reduced, they did not given their better priority of option for the said post and, therefore, before filling up of the said nine posts, they sought for calling of fresh options. The specific case of the applicant nos.2 and 6 in O.A.No.544/2007, who also filed counters in W.P.Nos.17397/2007 is that they have opted for the post of D.S.P. as one of the options and hence they do not come under the category of never opted candidates and, therefore, they sought for calling of fresh options. The case of the respondents 4, 5 and 6 in O.A.No.544/2007 who have come on record is that as the applicants in the said O.A. did not opt for the posts of DSP, and hence their initial options are final and irrevocable and they cannot be asked for fresh options. The Tribunal following the judgment of the Apex Court in ***A.P.PUBLIC SERVICE COMMISSION vs. G.SANKAR & OTHERS***[1] held that a candidate who never opted for a particular post, cannot be given another opportunity to give fresh options and accordingly directed that the candidates covered by notification No.5/98 for Group – I Services cannot be given opportunity to give their fresh options for the post for which they never opted at the relevant time.

6. Coming to the case of applicants in other O.As., though they exercised their option for the post of D.S.P., based on the posts available vis-à-vis their preferences, they were selected to the different posts noted above and they have put in six years of service and also got promotions. Now, in these circumstances, based on the present notification dated 13.2.2007 if they are again given selections, though in hierarchy, as contended by the applicants, they may have to lose, their service, promotion and monitory benefits. As rightly found by the Tribunal below, any selection shall not be

disadvantageous to the applicants. Further, the Commission based on the options given by the applicants initially, published the present notification. By virtue of which, as noted above, the above said applicants before the Tribunal are placed in a disadvantageous position and further there are no rules under the statute and there are no judgments of Apex Court governing the present situation and in these circumstances, as rightly found by the Tribunal, doctrine of equity has to be applied. Therefore, considering the facts and circumstances and considering the equity, the Tribunal has rightly set aside the notification dated 13.2.2007 selecting 20 candidates and directed the Commission to seek for the consent and willingness of the applicants.

7. In other words, the Tribunal held that the applicants in O.A.Nos.544, 889, 1310 and 1512 of 2007 who never opted for a particular post as one of the options, cannot be given another opportunity to give fresh options and these applicants who were already selected as per the options and accepted appointment and working and if they come up for selection for a higher post for which they have already opted, shall be selected and appointed, if they give consent and willingness and if they do not give consent and willingness, they shall not be selected for higher post and such posts shall be considered by the candidates next in the line as per merit and options already exercised by following the same process. The relevant portion of the judgment of the Tribunal is extracted as under better for better appreciation:

> "17. Therefore, this Tribunal allows O.A.No.544/2007 in part. O.A.Nos.889/2007, 1310/2007 and 1512/2007 are allowed. It is declared that the candidates selected under Notification No.5/98 for Group-I services are not entitled for another opportunity to give fresh options for the post for which they never opted in the past at the relevant time. So such a request is rejected. But, the candidates who were already selected as per the options and accepted appointments and working, and if they come up for selection for a higher post for which they have already opted, shall be selected and appointed if they give consent and willingness. If they do not give their consent and willingness, they shall

not be selected for higher post. Such posts shall be considered by the candidates next in the line as per merit and options already exercised by following the same process, if they are already appointed and working. If they don't give consent, they shall be continued in the same posts, which they are holding. The selection list which was published on 13.2.2007 is set aside. The A.P. Public Service Commission is directed to complete this exercise as early as possible and submit the same for approval of the Government, within a period of four weeks from the date of receipt of this order. In view of the order passed in O.A.No.544/2007, V.M.As. and M.A. stand disposed of accordingly."

8. In view of the above facts and circumstances and the directions of the Tribunal, we find no justification to interfere with the orders of the Tribunal and the writ petitions are devoid any merits and hence, they are liable to be dismissed.

9. At the request of the Standing Counsel for the Commission and having regard to the facts and circumstances of the case, we feel it appropriate to extend the time for complying the orders of the Tribunal. Accordingly the time is extended up to 30.11.2007.

10. Before parting with the case we would like to note that the Tribunal at paragraph no.16 of its judgment considering the contention of the applicants that announcement of the results i.e., notification dated 13.2.2007 is in violation of the interim orders of the Tribunal dated 13.2.2007;, made the following observations:

". . . .I do not want to go into the controversy whether the results were announced after knowing about the passing of the interim order i.e., before few minutes or few hours of passing of the interim order. When the A.P.P.S.C. is aware that the matter is coming up for hearing on 13.2.2007 it is undesirable to announce the results on the same day, and in all fairness, they ought to have waited for the hearing on that day. These hasty decisions create confusion and also throw doubt about the fairness."

11. As the Apex Court upheld the orders of the Tribunal in O.A.No.6643/2003, the Commission has taken up the process of filling up of the 9 vacancies of D.S.Ps. and it has published the list of 20 candidates by notification dated 13.2.2007, on which date the Tribunal has passed the interim orders in O.A.No.544/2007 to maintain status quo till 22.2.2007. As there are no orders staying the publishing of the notification of selected candidates, the Commission has published the notification and incidentally both the publication of selected candidates as well as the interims orders of the Tribunal coincided on the same date. However, the Tribunal has set aside the notification dated 13.2.2007. There is no material to show that the Commission has acted in haste. Hence, the above observations of the Tribunal are unwarranted and they are liable to be removed.

12. By expunging the above remarks of the Tribunal at paragraph no.16, of the impugned judgment, the writ petitions are dismissed confirming the remaining order.

T.MEENA KUMARI,J

G.CHANDRAIAH,J

AVS
DATE:08.10.2007

---

[1] 1999(9) Supreme 307